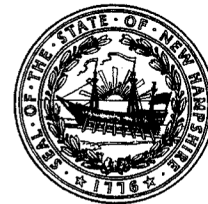




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

June 15, 2005

Brian Datson
d/b/a Spaulding Variety Store
3406 White Mountain Highway
Wakefield, NH 03872

Re: Docket No. AF 04-081 Motion to Accept Settlement Agreement

Dear Mr. Datson:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on June 15, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael J. Schaffani,
Legal Assistant

cc: Anthony P. Giunta, PG., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Lynn Woodard, DES WMD
Thomas Beaulieu, DES WMD
Susan Hanamoto, DES WMD

Brian Datson
D/b/a Spaulding Variety Store
3406 White Mountain Highway
Wakefield, NH 03872

Re: the former Spaulding Variety Store,
Wakefield, NH UST ID # 0-115539

**ADMINISTRATIVE FINE
No. AF 04-081**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Spaulding Variety Store., parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Spaulding Variety Store ("Spaulding") is the registered facility owner of one underground storage tank ("UST") system at the Spaulding facility ("the Facility"), further identified as UST # 0-115539, located on real property at 3406 White Mountain Highway, Wakefield, NH 03872 ("the Property").
3. On September 17, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-081 ("the Notice") to Spaulding seeking fines totaling \$4,500 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. Specifically, the Notice cited Spaulding for violating Env-Wm 1401.21(1) by failing to display and permanently affix a certificate bearing the facility's tank information. Pursuant to Env-C 607.02(b) the Division sought a fine of \$100.
5. The Notice further cited Spaulding for violating Env-Wm 1401.25(d) by failing to properly install and maintain overfill protection equipment on the UST system. Pursuant to Env-C 607.05(j) the Division sought a fine of \$400.
6. The Notice further cited Spaulding for violating Env-Wm 1401.30(b) by failing to conduct the annual test for the two line leak detectors at the Facility. Pursuant to Env-C 607.03(j) the Division sought a fine of \$2,000.
7. The Notice further cited Spaulding for violating Env-Wm 1401.31(a) by failing to maintain leak monitoring equipment in good working order at all times to continuously perform their original design function for the compartment 20,000-gallon UST and by failing to perform the annual test for proper operation. Pursuant to Env-C 607.05(d) the Division sought a fine of \$2,000.

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8. In order to settle this matter, the Division and Spaulding have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

9. Of the proposed fine, in the amount of \$4,500, 20% or \$900 shall be suspended due to this being a one-time, unintentional violation. An additional 20% or \$900 shall be suspended due to the Spaulding's cooperation in returning the facility to a compliance status. An additional 20% or \$900 shall be suspended due to the Facility's small business status.

10. The suspended portion of the proposed fine, in the amount of \$2,700, is contingent upon Spaulding maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this document. If Spaulding fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$2,700, shall become due and payable immediately. If Spaulding maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

11. Spaulding agrees to pay the remaining \$1,800 as follows: \$300 upon execution of this agreement by Spaulding; and installment payments in the amount of \$300 every 30 days from the date of the agreement until the balance is paid in full.

12. Payment under Paragraph # 11 and any payment that becomes due pursuant to Paragraph # 10 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

13. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

14. By executing this Agreement, Spaulding waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

15. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Spaulding, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

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16. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

May 13, 2005
Date

COPY
Brian L. Datson
Brian L. Datson

6/14/05
Date

DES Waste Management Division
COPY
Anthony Giunta
Anthony Giunta, Director

This Motion to Accept Settlement agreement is granted this 15th day of June, 2005.

COPY
Michael P. Nolin
for Michael P. Nolin, Commissioner
Department of Environmental Services